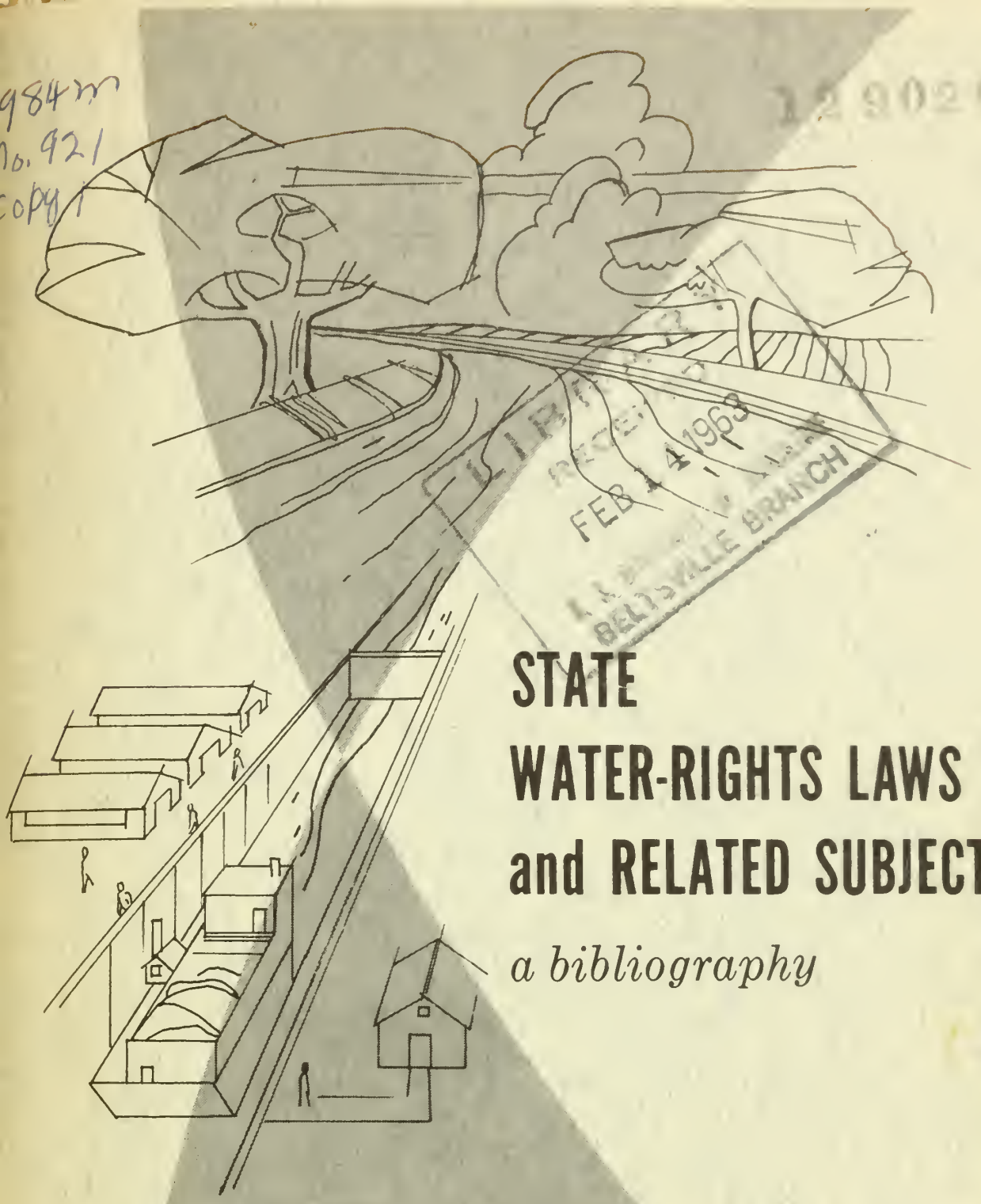
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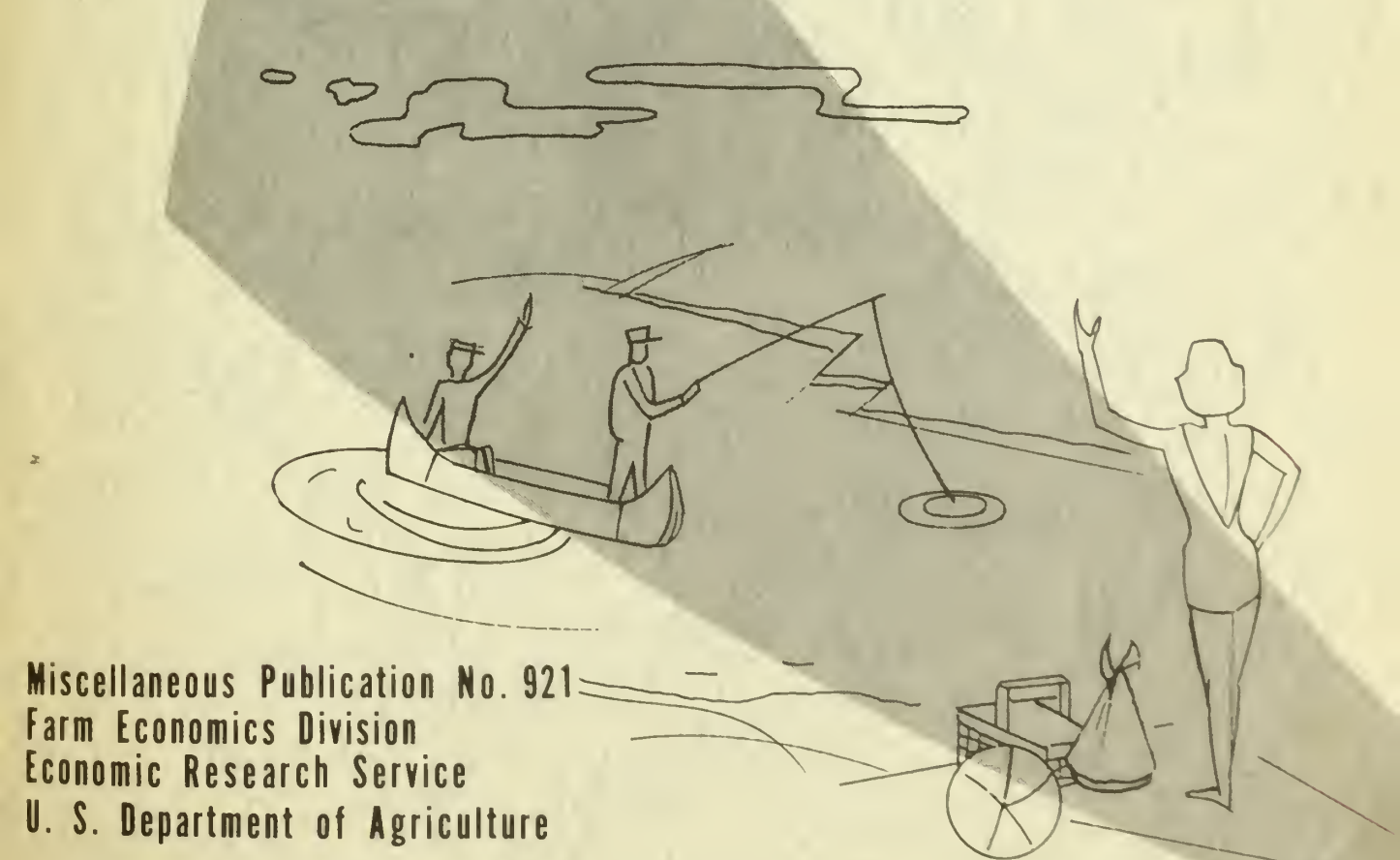
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# STATE WATER-RIGHTS LAWS and RELATED SUBJECTS

*a bibliography*



Miscellaneous Publication No. 921
Farm Economics Division
Economic Research Service
U. S. Department of Agriculture

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# STATE WATER-RIGHTS LAWS AND RELATED SUBJECTS

## A BIBLIOGRAPHY

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Economic Research Service

## INTRODUCTION AND EXPLANATION OF BIBLIOGRAPHY

The growing interest in laws concerning State water-rights and related subjects has caused State and Federal agencies, universities, legislative and executive study committees, and others to prepare a number of publications on the subject. Vitally concerned are public officials charged with administration of water laws and water-resource programs, courts, lawyers, and farm leaders. Also, some persons in foreign countries are studying our water laws.

This bibliography was prepared as an aid to those who will be searching available literature on the subject of State water laws. It should be useful in expediting research and promoting more careful analysis of the subject.

Publications dealing with water laws and related subjects in one region are of value to those concerned with such problems in other regions. Such publications include legal, economic, and related analyses. Numerous publications have emerged from a wide variety of sources. In the preparation of this bibliography special effort was made to achieve comprehensive coverage of publications dealing with State water-rights laws. But complete coverage of literature on related topics was not attempted, and discussions of various aspects of water law that appear in legal encyclopedias and in text or case books on real property or other subjects are not cited.

Part I covers publications dealing with State water-rights laws. It includes law review articles published during and after 1940 and omits those published earlier as well as some lengthy books that are included in part II. Most of the citations include a list of major topics covered. Some of the short articles cited have self-explanatory titles.

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1/ Mr. Turney is a member of the Maryland Bar; Mr. Ellis is a member of the Illinois Bar.

Part II consists of six supplemental lists of published materials. The numerous topics covered in these publications were omitted from the citations. A supplemental list entitled "General List of Publications" includes selected publications on subjects closely related to water law. It includes also some books and treatises on State water laws and certain publications on water law that were not accessible for review. References to a number of the published proceedings of symposiums, conferences, and similar meetings, cited in part I in connection with articles or papers on specific subjects, were not repeated here. Other supplemental lists are entitled "American Law Reports (1940 to mid-1959)," "Selected Law Review Articles Before 1940," "Selected American Law Reports Before 1940," "Federal Matters," and "Interstate and International Matters." Except for the American Law Reports (1940 to mid-1959), however, these supplemental lists are not exhaustive regarding the matters covered therein. The publications under "Federal Matters" and "Interstate and International Matters" consist primarily of those discovered in searching the available literature for publications on State water-rights laws.

The indexes (parts III and IV) are explained below. Part V cites other bibliographies of water-law publications to which the reader may wish to refer.

It was sometimes difficult to know whether to include, or how to cite, processed papers on the subjects covered. If the citation of a particular publication includes no indication of the publisher or the source (such as a law review or other periodical) this generally means that it is a processed paper which, so far as is known, has not otherwise been published. Some processed papers which appeared not to have been intended for publication were omitted.

It was difficult also to decide which publications dealing with subjects related to State water-rights laws should be included. Most of the abundant literature dealing with drainage laws was omitted. Also, the bibliography is limited to publications dealing with the United States.

Some important publications which rightfully deserve a place in this bibliography may well have been overlooked. Such omissions are sincerely regretted.

The bibliography is based on a survey of the literature which ended in mid-1959 and on replies to interrogatories sent in early 1958 to State water-resource agencies, law schools, and agricultural colleges. The cooperation received from these sources and the helpful comments of reviewers of a preliminary draft of this publication were much appreciated. We hope to issue periodic supplements to this bibliography.

## GUIDE TO USE OF INDEXES

Part III, Publications Index, will aid the reader in locating publications that deal with particular subjects, regions, or States. The index does not purport to show all of the topics covered in all the publications, as only the major headings or topics covered in each publication in part I, and only the titles of publications in part II, were included. Moreover, the references listed in the index under a particular State are limited to publications that deal entirely or primarily with that State. They do not include all references to the State that are scattered throughout the voluminous literature.

Symbols are used in the index to denote pertinent facts about a particular publication. Take, for example, 2 (E, Minn., 1954):

"2" means that it is publication number 2 in the cumulative list of publications in this bibliography.

"E" means that the publication deals with water law in one or more Eastern States. Eastern, for this purpose, includes the 31 States lying east of Texas and the Dakotas.

"Minn." means the publication is concerned entirely or substantially with the State of Minnesota.

1954 denotes the year in which the article was published.

The letter "W" appearing in a citation means that the publication is concerned with one or more of the 19 Western States. The letter "G" means General and indicates that the publication deals with both regions or is of general applicability.

Part IV, Author Index, lists for each author the location in the bibliography of publications of which he or she is author or coauthor.

## PART I. PUBLICATIONS ON STATE WATER LAWS, WITH TOPICS COVERED

1. ABBOTT, E. H., JR. Ways and waters in Massachusetts. Mass. Dept. Com., Div. Planning. March 1, 1955. 9 p. (Appears also in Harvard Law Rev. 28:478-495. 1915.)
Legal implications of water as it affects highways
Recommendations for legislation

2. ACCESS by the public to a private body of water for recreational purposes. Minn. Law Rev. 38:685-689. 1954. Case note.
Bed owned by State only if navigable
State may take through condemnation only property surrounding public water, under a Minnesota statute
Problems regarding dedication and estoppel
Recommended legislation

3. ACQUISITION of well and diversion of water by owner prior to 1935. Established prior right without filing. Utah Law Rev. 3:391-394. 1953. Case note.
Discusses whether determinative issues in such cases will be ownership of land on which source is located, intent to appropriate, and point at which water is diverted.

4. ADAMS, L. M. Water rights under the riparian and appropriation doctrines. In Timmons, J. F. and others, eds. Iowa's water resources - sources, uses, and laws, p. 99-108. Ames. 1956.
Definition of water rights
The riparian doctrine
The doctrine of prior appropriation

5. ADLER, S. K. Constitutionality of Colorado statutes providing for transmountain water diversions. Rocky Mt. Law Rev. 25:363. 1953. Case note.
Compensatory storage provisions
Conflict with Colorado constitution

6. AGNOR, W. H. Riparian rights in Georgia. Ga. Bar Jour. 18:401-414. 1956.
Present status of Georgia law
McDonald's problem
The general problem
Reasonable use theory
Doctrine of prior appropriation
Conclusions and suggestions

7. AGNOR, W. H. Riparian rights in the Southeastern States. S. Car. Law Quart. 5(2-A):141-148. Sup. Dec. 1952.
Discusses existing riparian rights in Southeastern States including definition of watercourse and use of water for irrigation and other purposes, and constitutional problems in attempting to change to the prior appropriation doctrine.

8. AKIN, W. E. Thinking of irrigating? Successful Farming 54:32. Feb. 1956.

Explains principles of prior appropriation and riparian rights as they pertain to irrigation.

9. ALSPAUGH, J. A. Real property--riparian rights. N. Car. Law Rev. 1956: 247-253. Case note.

Definitions of riparian land

Questions of nonriparian use

10. ANDERSON, W. C., and COOK, F. H. Summary of legal principles governing the use of water for irrigation in Pennsylvania. Pa. State Coll., Sch. Agr., Prog. Rpt. 31, 4 p. May 1950.

Ownership of water

Common law water rights

Methods of securing extraordinary use of water

11. THE APPROPRIATION of water for beneficial purposes. Report of Committee appointed by Governor of Kansas. Amer. Water Works Assoc. Jour. 37:601-631. July 1945.

Appointment of committee and procedure

Change in character and amount of water use since adoption of the common law

Interrelationship of surface and ground water

Scope of a State's power over natural resources

The two doctrines of water law

The change from the common law

Comparison of legislation and judicial decisions in Kansas and Nebraska

Administrative procedure

Adjusting the law to present needs

The committee's comments

The new Kansas law

12. ARENS, R., and HABER, D. Michigan law of water allocation. In Haber, D., and Bergen, S. W., eds. The law of water allocation in the Eastern United States, p. 377-429. New York, Ronald. 1958.

Arens, R., Description

Riparian rights

Ground water

Diffused surface waters

Prescription

Private transfer of water rights

Supervening rights of the public

Governmental powers and activities

Haber, D., Evaluation

Protection of investment, the public interest and State water policy

Protection of investment

The public interest

Relationship between public interest and protection of investment

Administration

13. ARKANSAS WATER STUDY COMMISSION. Water in Arkansas. A report on the surface water resources in Arkansas, Little Rock. Nov. 1956.

Outlines the common law and the statutes of Arkansas on water law (p. 52) and includes recommendations (p. 55).

14. ASPECTS of legal control of surface water. Res. Dept., Ark. Leg. Counc. Res. Memo. No. 1, Proposal No. 6. Jan. 22, 1954. 7 p.

An exposition of the riparian and appropriation doctrines of water usage and explanation of a water code.

15. ASPECTS of legal control of sub-surface water. Res. Dept. Ark. Leg. Counc. Memo. No. 1 on Ark. House Concurrent Resolution No. 16. Jan. 22, 1954. 9 p.

Discussion of the English common law, the American or reasonable use and the correlative rights and appropriation doctrines, and Arkansas ground-water law.

16. BADE, E. S. Title, points and lines in lakes and streams. Minn. Law Rev. 24:305. 1940.

Discussion of the laws regarding water boundaries and bed ownership in Minnesota.

17. BAGLEY, E. S. Some economic considerations in water use policy. Kans. Law Rev. 5:499-516. 1957.

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Economic aspects of the public interest in water resources

Economic implications of water rights law

18. BAKER, D. M., and CONKLING, H. Water supply and utilization. New York, Wiley. 1930. p. 218-258, 372-380, 454-469.

Water rights in surface streams

Water rights in underground water

Valuation of water rights

19. BAKER, G. B., JR. Irrigation with non-riparian surface water and subterranean water in Kentucky. Ky. Law Jour. 42:493-497. 1954.

Subterranean water

Non-riparian surface water

20. BALL, V. C. Shaping the law of weather control. Yale Law Jour. 58:213-244. Jan. 1949.

Scientific advances in weather modification and their possible application

The rise of disputes

Legal analogies

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Discusses physical, financial, and legal aspects, and Federal-State relationships.

22. BARLOW, R. A., JR. Real property--boundaries--ownership of islands in bed of stream. Nebr. Law Rev. 26:121-123. 1947. Case note.

Determining ownership of an island in the bed of a non-navigable stream.

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Present water rights problem
Proposed surface water law
Limited modification of riparian doctrine

24. BARLOWE, R. Some economic and policy aspects of the water use problem in the Paw Paw Basin. In Haber, D., and Bergen, S. W., eds., The law of water allocation in the Eastern United States, p. 495-517. New York, Ronald. 1958.

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Types of information needed for economic analysis
Some emerging policy problems

25. BARLOWE, R. Wanted--water rights for Michigan irrigators. Mich. Farm Econ.; No. 89, p. 3-4. May 1950.

Discusses need for water laws conducive to expansion of irrigation.

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26a. BARLOWE, R. We need water rights for humid-area irrigators. Farm Policy Forum 3(9):17-18. Sept. 1950.

Discusses uncertainty of water rights for irrigators in humid-area States.

27. BARLOWE, R. What type of State legislation? Farm Policy Forum 8(2):32-36. Fall 1955.

Developing legal base
Riparian alternatives
Legislation for the West
Ground water legislation

28. BARNARD, D. L. Change of point of diversion--time limitation on use of water by municipality. Rocky Mt. Law Rev. 24:121-123. 1951. Case note.

28a. BARNES, J. R. Hydrological aspects of ground water control. Proc. Water Law Conf., Law Sch., Univ. of Texas, May 25-26, 1956. p. 134-145.

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A review of the Texas law of ground water
Objectives and methods of control
Control methods adaptable to Texas

29. BARNHILL, K. E., JR. Water adjudication decree--notice--statute of limitations. Rocky Mt. Law Rev. 25:239-243. 1953. Case note.

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30. BARRETT, J. E. Constitutionality of the Wyoming underground water statute. Wyo. Law Jour. 3:140-144. 1949. Case note.

31. BEISE, C. J. Compensatory storage. Rocky Mt. Law Rev. 22:453-461. 1950.

Discusses possibility of providing storage of water to compensate local parties for transmountain diversion.

32. BEISE, C. J. Consider Victoria (Commonwealth of Australia)--in irrigation development. Dicta 21:95. 1944.

Compares the water problems of Colorado with those of Victoria.

33. BEISE, C. J. Factors affecting water utilization in Colorado. Rocky Mt. Law Rev. 19:341-351. 1947.

Land

Amount of water

Where the water comes from

How much water we use

Who owns the surplus

East slope--west slope

34. BEISE, C. J. Reservation for rights of way for canals and ditches in favor of United States over former public lands of the United States west of the 100th meridian. Dicta 23:75-82. 1946.

35. THE BENEFICIAL use of water in Mississippi. A preliminary report on the historical, physical and legal aspects of water problems in the State, to the Governor, Legislature, and people of Mississippi, prepared under the direction of the Miss. Inter-Organ. Comm. Water Resources, p. 13-52. Dec. 1953.

Organization of American water law and administration: Definitions of water rights

Tentative summary of the existing water rights law of Mississippi

Adjusting the riparian law of waters to the wants and needs of the people

Advantages of State guidance in the field of water rights, development, and use

Conclusions and recommendations

36. BENNETT, J. K. Concurrent legal interests in water supplies. South. Calif. Law Rev. 22:349-363. 1949.

Appertaining to water in possession--

A surface pond; The pond is under possession - Is it not owned? Whether the molecules of water, or interests in relation thereto, are termed real or personal property is not generally pertinent; Additional authorities that water

36. BENNETT, J. K.--Cont.
in possession is owned; The analysis of the ownership into concurrently existing legal relations or specific rules of human conduct; Possessed water above the ground or under the ground.

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Clear concepts of "rights" are prerequisites to an understanding of water rights

Legal relations exist only between legal entities

All legal relations are incorporeal

The test of a legal interest

Legal interests generally exist in aggregate

Some misconceptions due to considering interests in water supplies as one indissoluble whole

Analysis--the starting point

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Is there ownership of running water?

Is a water right an appurtenance?

Is it a servitude?

Is it an easement?

Inadequate terminology?

Water rights--an overworked and loosely used phrase

Precise terminology and analysis as a means of dispelling confusion

39. BEUSCHER, J. H. A report to the water resources committee on the subject of Wisconsin's law of water use today. Wis. Univ. Law Sch., Madison. Jan. 28, 1958. 30 p.

The hydrologic cycle and the general divisions of water law

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The law of underground water

The law of diffused surface water (flood water)

Public rights in navigable water

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The law of underground water

The law of water in watercourses, lakes and ponds

Public rights in navigable water

41. BEUSCHER, J. H. Your rights along and under the water that borders your farm. Hoard's Dairyman 99:632-633. July 10, 1954.

Discusses bed ownership, rights acquired through reliction or accretion, and public rights of use and access to navigable waters.

42. BILLHYMER, P. A statute applied retroactively. Rocky Mt. Law Rev. 19:281-284. 1947. Case note.

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43. BILLINGS, N. F. Technical aspects of water management practices for the Paw Paw River Basin. In Haber, D., and Bergen, S. W., eds., The law of water allocation in the Eastern United States, p. 511-517. New York, Ronald. 1958.

Hydrology as an aid in developing legislation

Hydrology as an aid in past legislation for water management

44. BLACK, A. P. Basic concepts in ground water law. Amer. Water Works Assoc. Jour. 39 (10):989-1001. Oct. 1947.

Some basic concepts--English or common-law doctrine; American rule of reasonable use; Doctrine of prior appropriation

Limitations of prior appropriation

Classifications of ground water

Beneficial use

Administration

Definition of vested rights

Exemption for domestic use

Effect of draft

Priority of usage

Sealing abandoned wells

Designated areas of control

45. BLAICH, O. P. Ground water management in basins where recharge is small in relation to stock, with particular reference to legislation in New Mexico. Com. Econ. Water Resources Devlpmt. Conf., West. Agr. Econ. Res. Council and West. Reg. Res. Com. W-42. Proc. 1956:69-79.

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46. BLISS, J. H. Administration of the ground water law of New Mexico. Amer. Water Works Assoc. Jour. 43:435-440. June 1951.

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Administration

Constitutionality

47. BOGGS, E. M. A study of water rights on the Los Angeles River, California. Report of irrigation investigations in California. U. S. Dept. Agr., Off. Expt. Stas. Bul. 100, p. 327-351. 1901.

Laws of appropriation, p. 332
Litigation, p. 335-342
Conclusions, p. 346-350

48. BOHANAN, L. B. Trends and developments in irrigation in Maryland. Md. Agr. Expt. Sta. Misc. Pub. 244, p. 12-18. Oct. 1955.

Discusses common and statutory law in Maryland pertaining to water use.

49. BOONE, P., JR. State claim in Texas stream waters. Tex. Law Rev. 28:931-948. 1950.

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Problems in the recommendation of new legislation

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Natural watercourses
- Definitions
- Nature of riparian rights
- Navigable watercourses
- Nonriparian use
- Nature of riparian land
- Pollution control by public

Diffused surface waters
Ground waters
Natural lakes and bayous
Artificial watercourses
Prescription
State and local agencies or organizations
Federal Watershed Protection and Flood Prevention Act
Interstate compacts

51. BOULDIN, V. W. Perfection and loss of appropriative rights. Tex. Univ. Law Sch., Water Law Conf., Proc. 1952 and 1954: p. 226.

Perfection of the right
Loss of water rights
Loss by prescription

52. BOULDIN, V. W. The law of surface water rights in Texas. Tex. Univ. Law Sch., Water Law Conf., Proc. 1952 and 1954: p. 96.

Discussion of riparian and appropriative rights in Texas.

52a. BOULDIN, V. W. Rights in diffused surface water in Texas. Proc. Water Law Conf. School of Law, Tex. Univ., Austin, June 17-18, 1955, p. 5-14.

Mixed benefits and detriments from use of diffused surface water
Texas court decisions and statutes regarding such water
Court decisions elsewhere

53. BOUNDARIES--thread of the stream--the Kentucky Rule. Ky. Law Jour. 44:466-470. 1956. Case note.

Fixing stream boundaries.

54. BOWERS, R. D. Law for riparian owners. Rural New Yorker 99:745. Dec. 17, 1949.

Rights and duties of riparian owners.

55. BOYD, W. S., JR. Property--licensee's right of action for diversion. Ala. Law Rev. 3:248-251. 1950. Case note.

Licensee's right to equitable relief against third party for diverting water.

56. BREITENSTEIN, J. S. Some elements of Colorado water law. Rocky Mt. Law Rev. 22:343-355. 1950.

57. BRENNAN, C. J. Water supply problem of Kansas City suburbs south and east in Jackson County, Missouri. A State Report. Kans. Law Rev. 24:248-252. 1956.

Municipal authority over its water supply.

58. BROOKS, S. Legal aspects of rainmaking. Calif. Law Rev. 37:114-121. Mar. 1949.

Liability for diversion of air-borne moisture

Liability for precipitation of harmful rain

Possibility of legislation

59. BULLARD, R. G. The new water rights law in Iowa. Mo. Basin Inter-Agency Com. Proc. 1958: (App. D.) p. 1-8.

Explains Iowa's 1957 water law and how it functions.

60. BURKE, W. J. Origin, growth and function of the law of water use. Wyo. Law Jour. 10:95-111. 1956.

The development of water law in Eastern and Western States.

61. BURKE, W. J. Western water law. Wyo. Law Jour. 10:180-186. 1956.

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62. BURKE, W. J. Western waters--property rights in or nationalization of--which? Presented at meeting of Association Western Engineers, Sacramento, Calif. Sept. 17, 1956. 18 p.

The evaluation of Federal-State participation in interstate water compacts and resource development.

63. BURRELL, D. E. and STUBBS, D. G. Rights of a riparian landowner in Missouri. The case for "reasonable" use in Missouri. Mo. Law Rev. 19:138-146. 1954.

64. BUSBY, C. E. American water rights law: A brief synopsis of its origin and some of its broad trends with special reference to the beneficial use of water resources. S. C. Law Quart. 5(2-A):106-129. Sup. Dec. 1952.

Origin of the American common law system of water rights

Influence of early English authorities: The Year Books, Lord Coke, and Blackstone.

64. BUSBY, C. E.--Cont.

Influence of the American and French revolutionary movements

Influence of the early American authorities: Story and Kent

Origin of the American system of prior appropriation

Influence of the Indian, Spanish and Mexican occupations: Irrigation

Influence of the early United States occupation: Mining and irrigation

Extension of the system of prior appropriation and restriction of the common law system in the west

Influence of and changes which developed in the California concept of water rights

Influence of and changes which took place in Oregon

Changes in Kansas

Influence of and changes which developed in the Colorado concept of water rights

65. BUSBY, C. E. Beneficial use of water in South Carolina. Preliminary report for S. Car. Soil Conserv. Com. on historical, physical and legal aspects of water problems in the State. Columbia. June 1952.

Ch. 6-9 include the following topics: Organization of water law and working definitions of water rights

Tentative summary of the existing water rights law of South Carolina

Adjusting the riparian law of watercourses to the wants and needs of the people

Advantages of State-wide administration of water rights and the appropriation of water for beneficial use

66. BUSBY, C. E. Let's modernize our antiquated water laws. Agr. Leaders' Digest 38(4):18-19. April 1957.

Discussion of shortcomings of current water laws.

67. BUSBY, C. E. Some alternative possibilities for modernizing State water laws. Presented at the American Farm Bureau Federation, Land and Water Use Conference, Chicago, Ill., June 1955.

Suggestions for improving existing water laws.

68. BUSBY, C. E. Water rights and administration with respect to soil and water conservation. Agr. Engin. 34:769:770. Nov. 1953.

Deals with factors giving rise to water problems having legal and administrative implications.

69. BUSBY, C. E. Water rights and our expanding economy. Jour. Soil and Water Conserv., Vol. 9, Nos. 3, 5, 9. March, May, July 1954.

Systems of water rights and administration

The system of riparian rights to streamflow

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Rights to waters in the ground
Changes needed in existing systems
Establishment of basic water policies
Implementation of water policies
Work in South Carolina
The work in Virginia
Work in Mississippi
Work in other States
Summary of work in the States

70. BUSBY, C. E. Water rights in the Southeast. Presented at joint session, Engineers (ASAE) and Soil Cons. Sec., ASAW, Louisville, Ky., Feb. 7-9, 1955. 5 p.

Discussion of water rights and problems, with some proposed answers to the problems.

71. BUSBY, C. E. Water use and water rights. Soil Conserv. 21(7):156-160. Feb. 1956.

Indicates that local individuals and groups exercise initiative in solving problems.

72. BUSBY, C. E. What are your water rights? Better Farming. Winter 1956, p. 14-15.

Discusses problems in the law of water rights.

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74. BUTLER, C. C. Water policies for eastern agriculture. Presented at Conference on Legislative Proposals for Water Resources and Irrigation in New York, Cornell Univ., Ithaca, N. Y., Oct. 9, 1958.

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Encroachment by the Federal supremacy theory in water

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Susceptibility of private ownership of the beds of navigable streams in Louisiana.

76. CALIFORNIA INTERIM FACT-FINDING COMMITTEE ON WATER POLLUTION. Report to the Assembly of the State of California. Sacramento. 1949.

Analysis of statutes pertaining to water pollution, p. 145-151

76. CALIFORNIA INTERIM FACT-FINDING COMMITTEE ON WATER POLLUTION--Cont.

Appendix--Compilation and summary of pollution control legislation, 1949 sessions; lists changes and additions to California pollution law.

77. CALIFORNIA'S water pollution problem. Stanford Law Rev. 3:649-666. 1951.

California's legislative solution

Legislation prior to 1949

The California legislative scheme since 1949

Mechanics of present legislation

Possibilities of conflicting jurisdiction

Enforcement and review of board orders

Recent Federal legislation

78. CALLAHAN, C. C. Principles of water rights law in Ohio. Ohio Dept. Nat. Resources, Div. Water. Columbus. Jan. 1957. 34 p.

Introduction

Nature of problems

General theories of water rights

Legal classification of waters

Streams

The doctrine of prior appropriation

The doctrine of riparian rights

Use of water

Disposition of water

Pollution

Diffused surface water

Relation to other waters

Use of surface water

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